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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,024	05/14/2001	Nemo Semret	A32038-PCTUS	8957
21003	7590	09/08/2004	EXAMINER	
BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			SNAPP, SANDRA S	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/674,024

Applicant(s)

SEMRET ET AL.

Examiner

Sandra Snapp

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

This Office Action is in response to the Amendment filed 5-27-04. Currently, claims 1-42 are pending in the application.

***Specification***

The Abstract submitted with the Amendment of 5-27-04 is acceptable and has been entered into the application.

***Claim Objections***

Claims 16-18 have been successfully amended to overcome the previously cited objections, and as such the objections are herein withdrawn.

Claim 8 is now objected to because the phrase “wherein an said resource” is confusing. The Examiner suggests amending the claim to read, “wherein said resource.”

Claim 25 is now objected to because the phrase “said initial allocation” lacks antecedent basis. Should this be “said first allocation?”

***Claim Rejections - 35 USC § 112***

Claims 1, 4-13, 15, 18, 21, 25-28, 31, 33, 34, 38-40 and 42 have been amended to successfully overcome the previous rejection based on 35 U.S.C. 112, second paragraph. As such, the rejection is herein withdrawn.

***Claim Rejections - 35 USC § 101***

Claims 1-12, 14-33 remain and are finally rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

Claims 1-42 remain and are finally rejected under 35 U.S.C. 102(e) as being anticipated by the Ausubel patent (US 5,905,975).

The Ausubel patent discloses a method of allocating a resource and its associated apparatus, comprising the steps/elements of:

Means for retrieving data indicative of at least one bid comprising a quantity data component and a price data component (col. 11, lines 15-32),

means for retrieving second data indicative of a new bid comprising a quantity component and a price component (col. 11, lines 15-32),

means for first allocating a first portion of the resource to each of the at least one bid having a price component higher than the price component of the new bid (col. 11, lines 35-43),

means for second allocating a second portion of the resource to the new bid responsive to the first allocation step (col. 11, line 54 to col. 12, line 19),

means for calculating the new bid's cost as a function of the price data component of at least one said at least one bid having a price component lower than the price component of the new bid (col. 12, lines 7-19), and

Art Unit: 3624

means for storing cost data indicative of the new bid's calculated cost (col. 12, lines 50-54) (claims 1, 18 and 34);

The resource is bandwidth (spectrum rights, col. 7, lines 30-35) (claims 2, 19 and 35);

The new bid's resource allocation and the calculated cost are transmitted to an entity who made the new bid (col. 12, lines 7-19) (claim 3);

The second portion of the resource is utilized by an entity associated with the new bid (col. 12, lines 7-19) (claim 4);

Means for ordering the at least one bid corresponding to the first data by the at least one bid's price component (col. 11, lines 5-14) (claims 5 and 21);

Means for retrieving data indicative of the resource's maximum capacity and wherein the first and second allocation steps are responsive to the maximum capacity (col. 11, lines 15-32) (claims 6, 22 and 37);

The resource is allocated to the new bid only if the first portion of the resource is less than the maximum capacity (col. 12, lines 7-19) (claims 7 and 23);

The resource is allocated in a first allocation before the new bid is processed (col. 12, lines 7-19) (claims 8 and 24);

The new bid's cost is calculated as a function of at least one bid corresponding to the first data having the lowest price component of bids which were allocated in the first allocation (col. 12, lines 7-19) (claims 9, 25 and 38);

The new bid's cost is calculated as a function of a plurality of bids corresponding to the first data having price components that are lower than the new bid's price component (col. 11, lines 15-32) (claims 10, 26 and 39);

Art Unit: 3624

The new bid's cost is calculated as a function of at least one bid corresponding to the first data having the lowest price component that would have received an allocation of the resource if the new bid was not retrieved (col. 11, lines 15-32) (claims 11, 27 and 40);

The new bid's cost is calculated as a function of a plurality of bids corresponding to the first data having price components that are lower than the new bid's price component (col. 11, lines 15-32) (claims 12 and 28);

One of the at least one bid is submitted by a processor performing the first and second allocation steps (cpu, col. 8, lines 1-20 and col. 11, lines 5-32) (claim 13);

The at least one bid comprises valuation data comprising a plurality of price components associated with a plurality of quantity components (col. 11, lines 15-32) (claims 14, 30 and 41);

The first and second allocations are responsive to the plurality of price components and the quantities components (col. 12, lines 7-19) (claims 15, 31 and 42);

The new bid comprises valuation data comprising a plurality of price components associated with a plurality of quantity components (col. 12, lines 7-19) (claims 16 and 32);

The allocation is responsive to the new bid's plurality of price components and the quantity components (col. 11, lines 15-32) (claim 17);

Means for storing data indicative of the new bid's cost (memory, col. 8, lines 5-8) (claim 20);

One of the at least one first bids is submitted by an operator of the apparatus (bidder, col. 7, lines 51-65 and col. 11, lines 5-14) (claim 29); and

The processor transmits information indicative of the price component of the new bidding entity to the at least one first bidding entity (cpu col. 8, lines 1-20 and col. 11, lines 5-32) (claim 36).

***Response to Arguments***

**With regard to the 101 rejection**, the rejection of claims 1-12 and 14-33 remain and are finally rejected under 35 U.S.C. 101 because they still lack any recitation of technology in the body of the claims. The Applicant traverses the rejection stating that the claim language is directed to statutory subject matter and Bowman clearly distinguishes from the present application. It is the Examiner's position that the claims are not directed to statutory subject matter because they do not recite any form of technology in the body of the claims. While the invention may clearly disclose such structure and technology in the specification, it is not claimed and as such does not meet the statutory requirements. Also, while the Examiner appreciates the Applicants position that the Bowman case clearly distinguishes from the presently claimed invention, the Examiner clearly states in the previous Office Action that Bowman was merely cited for its content and reasoning. That is, Bowman was cited to illustrate the Patent Office's position on these matters. The Patent Office maintains its position that some form of technology must be recited in the body of the claims in order to fulfill the statutory requirements. For example, all the steps of recited claim 1 in the present invention could be performed by a human being, without any form of technology, and as such would not fit within the required criteria for patentability. Therefore, the rejection based on 101 is herein maintained

Art Unit: 3624

and made final. The Examiner suggests adding some language directed to a computer in the body of the claims to overcome this rejection.

**With regard to the rejections based on 35 U.S.C. 102**, the Applicant asserts that Ausubel does not disclose any “allocation” of the resource until all bidding and quarrying rounds are completed, as such there is no provision for continuous reallocation of the resource at auction. The Examiner understands “allocation” as being to designate or set aside. With that meaning in Ausubel does allocate the resources prior to the bidding being complete. For example, in col. 11, lines 33-57, the Ausubel system discusses the auctioneer announces that 2,000,000 shares were demanded at \$10, then the auctioneer then indicates he is willing to sell 1,100,000 shares at \$11, hence the resources are designated at a lower price, then at a higher price.

The Applicant states that the cost to the bidder, in the Ausubel system, is the most recent price offered by the auctioneer at which the market cleared, and does not depend on bids submitted that led to prior allocations. The Examiner disagrees. In Ausubel, the auctioneer takes into consideration the current bids before announcing a message for shares at a higher bid (See above). As such, the bids in Ausubel do depend on bids submitted previously.

The Applicant states that all bidders in the Ausubel system pay an identical price, rather than having each successful bidder’s cost calculated as a function of the price bid by other bidders. As stated above, the bidder’s cost is calculated as a function of the price bid by others.

The Applicant also asserts that Ausubel fails to disclose the step of calculating the new bid’s cost as a function of the price data component of a least one of the at least one bid having a price component lower than the price component of the new bid because every bidder’s cost in



Art Unit: 3624

Ausubel is identical and equals the price offered by the seller/auctioneer at which the market closes. See the discussion above. Also, Ausubel discloses an auction system wherein new bids are determined as a function of lower bids as evidenced in the discussion of English auctions in col. 27, line 14 through col. 28, line 17.

Since the Ausubel patent does disclose all the features of the present invention, it is herein finally rejected.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs.

Art Unit: 3624

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



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